Keller Ford, Inc. ***and*** **Bryan Knapp.** Case 7–CA–43269

October 1, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

On May 2, 2001, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended order as modified below.[3]

The judge dismissed the complaint allegation that the Respondent violated Section 8(a)(1) of the Act when it told employee Bryan Knapp that talking to other employees about Knapp's insurance copayment was "hazardous to [his] health," reasoning that Knapp was acting solely in his own interest and was not seeking group action. In his exceptions, the General Counsel does not contend that Knapp's activities regarding the insurance copayment were concerted, but the General Counsel does argue that the Respondent's statement nevertheless violated Section 8(a)(1). For the reasons set forth below, we agree with the General Counsel.

In July 2000, Knapp repeatedly complained to his supervisor, Leonard Miller, about the timing of an increase in the Respondent's copayment for Knapp's life and disability insurance. Knapp believed the increase should have occurred on July 1, 2000, and was displeased when Miller reported the change would not take place until January 1, 2001. Miller told Knapp that the Respondent was not likely to change its decision unless a lot of other employees were similarly affected by the Respondent's decision. Knapp said that he would speak to other employees. Miller responded by telling Knapp, "[D]on't go getting everybody riled up about this. It could be hazardous to your health."

In *K Mart Corp.*, 297 NLRB 80 fn. 2 (1989), the Board found that the employer violated Section 8(a)(1) of the Act by broadly prohibiting an employee from discussing terms and conditions of employment with fellow employees. The Board did not pass on whether the employee was engaged in protected concerted activity when he discussed work related issues with coworkers, finding instead that the employer's broad prohibition alone was an independent violation of the Act.

Miller's statement warning Knapp that speaking to other employees would be "hazardous to [his] health" would reasonably tend to interfere with Knapp's free exercise of his right under Section 7 to discuss his concerns regarding terms and conditions of employment with his coworkers. Accordingly, as in *K Mart Corp.*, supra, the Respondent's broad threat independently violated Section 8(a)(1) of the Act regardless of whether Knapp was actually engaged in protected concerted activity.

ORDER

The National Labor Relations Board adopts the Order of the administrative law judge as modified below and orders that the Respondent, Keller Ford, Inc., Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(b) and reletter the subsequent paragraphs.

"(b) Telling its employees that discussing their concerns over terms and conditions of employment with other employees could be hazardous to your health."

2. Substitute the following for newly relettered paragraph 1(c).

"(c) Discharging its employees because they testified in a National Labor Relations Board proceeding."

3. Substitute the following for paragraph 2(d).

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In addition, some of the Respondent's exceptions imply that the judge's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that the Respondent's contentions are without merit.

The judge found that the Respondent discharged the Charging Party, employee Bryan Knapp, in violation of Sec. 8(a)(3) and (4) of the Act, but that Knapp's discharge did not independently violate Sec. 8(a)(1). We adopt the judge's finding that the Respondent violated Sec. 8(a)(4) by discharging Knapp. We find it unnecessary to determine whether the discharge also violated Sec. 8(a)(3) because the finding of such an additional violation would not materially affect the remedy. No exceptions were filed to the judge's finding that Knapp's discharge did not independently violate Sec. 8(a)(1).

[2] We adopt the judge's conclusion that Knapp's demotion did not violate the Act. The judge, however, inadvertently included relief for the demotion in the remedy section of his decision. We hereby correct the remedy to eliminate any reference to Knapp's demotion.

[3] We will modify the judge's recommended Order in accordance with *Ferguson Electric Co*., 335 NLRB 142 (2001).

"(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payments records, timecards, personnel records, and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

4. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT tell our employees that their union organizing activity and testimony under the Act was the reason for adverse actions against them.

WE WILL NOT tell our employees that discussing their concerns over terms and conditions of employment with other employees "could be hazardous to your health."

WE WILL NOT discharge our employees because they testified in a National Labor Relations Board proceeding.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Bryan Knapp full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Bryan Knapp whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Bryan Knapp, and within 3 days thereafter, notify Bryan Knapp in writing that this has been done and that the discharge will not be used against him in anyway.

KELLER FORD, INC.

Thomas W. Doerr, Esq., for the General Counsel.

David E. Khorey, Esq., and *Stephanie R. Setterington, Esq. (Varnum, Riddering, Schmidt & Howlett),* of Grand Rapids, Michigan, for Respondent.

Bryan Knapp, of Coral, Michigan, for the Charging Party.

DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge. The complaint alleges that Respondent Keller Ford, Inc. demoted Charging Party Bryan Knapp, refused to pay the full copayments on his life and disability insurance policy, and, on August 2, 2000, discharged him after 11 years' employment as a service technician or mechanic, all in order to discriminate against him because of his union and concerted activities and because of his testimony in a prior Board proceeding in violation of Section 8(a)(3), (4), and (1) of the National Labor Relations Act. Respondent denies that it violated the Act in any manner.[12]

Respondent, a corporation with an office and place of business in Grand Rapids, Michigan, is a retail automobile dealership that sells and services new and used Fords and other used automobiles. During 1999 Respondent had gross revenues in excess of $500,000 and purchased and received at its Grand Rapids facility goods valued in excess of $50,000 directly from points located outside Michigan. I conclude that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also conclude that District Lodge 97, International Association of Machinists and Aerospace Workers, AFL–CIO (Union), is a labor organization within the meaning of Section 2(5) of the Act.

Knapp testified in a hearing held on February 24–25, 1999, before Administrative Law Judge Richard H. Beddow Jr. In JD–62–99, issued on May 18, 1999, Judge Beddow made the following findings of fact:[13]

> The Respondent's automobile dealership employs service technicians (mechanics), who work in Respondent's service department under the direct supervision of service manager Leonard Miller. Miller reports to Jerald Zezulka, the director of Respondent's service and part departments, and Zezulka, in turn, reports to Owner Robert Keller.
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> On July 29, [1998,] in Case No. 7–CA–21382, the Union filed a petition seeking to represent Respondent's service technicians and an election was conducted on October 8. The tally of ballots showed that, by a vote of 9 to 8, a majority of voters cast ballots against representation by the Union. On October 13, the Union filed Objections to the election.
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> Bryan Knapp is a service technician and one of three group leaders in the service department. As a group leader, Knapp oversees the delegation of work to members of his team and works closely with service manager Miller. Knapp and Miller regularly discuss both work and non-

[12] This case was tried in Grand Rapids, Michigan, on February 13 and 14, 2001. The charge was filed on August 8 and amended on October 16, 2000; and the complaint was issued on October 23, 2000.

[13] The quotation has been edited in minor respects to correct obvious errors in spelling or punctuation.

work matters and occasionally socialize together outside of work. Knapp is an avid union supporter, a leader in the Union's organizing campaign and he maintained frequent contact with Paul Shemanski, the Union's business representative regarding events occurring at the dealership.

Technicians Gary Malmgren and Aaron Bass also work closely with Miller, and have friendly relations with him. Both have been primary union supporters since the outset of the Union's campaign and in July 1998 they and a group of service technicians [met] with business representative Shemanski and thereafter 11 technicians signed a union authorization petition, and, as noted, on July 29 the Union filed a petition for an election. At about 5 p.m., the day the petition was filed, Miller took Knapp aside and told him that a petition had been filed to form a union at the dealership. Miller also said that Zezulka had told him that he had talked to owner [and President] Keller (who was on vacation at the time) and that Keller had told Zezulka that he would sell the dealership before he would let it go union. The following day, Miller again took Knapp aside and told him that he had talked directly to Keller and that Keller had told him that he would sell the dealership before he would let it become unionized. Miller admitted that he discussed the possible sale of the dealership with Knapp in July after the union petition was filed but he did not recall "mentioning union" in the context of that conversation. Otherwise, he did not specifically deny telling Knapp that Keller had indicated that he would sell the dealership before letting it become unionized and he admitted that he may have had more than one conversation with Knapp about the possible sale of the business.

Miller also approached service technician Gary Malmgren in his work area and took him to another part of the facility where he asked Malmgren if he knew anything about the "union petition." When Malmgren indicated that he knew nothing about it, Miller asked him what kind of issues may have brought it about, and Malmgren then proceeded to tell Miller about several issues that he had heard about from other workers.

One week later after Miller first talked to Malmgren, Miller told Malmgren to attend a meeting on company time in the office conference room. Two other service technicians were present along with Miller and Keller. Keller mentioned the union petition and asked the employees to tell him what issues needed to be addressed. Malmgren brought up holiday pay, insurance and changes in Respondent's policy manual and Keller said that he wanted to find out what the issues were and take care of the problems in the shop.

On August 10, Miller spoke to Knapp in his work area and asked him to actively campaign against the Union. A week later Keller walked by Knapp in the shop and told him that he wanted Knapp "to be his cheerleader so that we could get this thing behind us."

In mid-August, Keller, Zezulka, and Miller met with service technician team leaders Bryan Knapp and Tom Boss and technician Don Russell [who was] substituting for team leader Phil Fassett. Keller . . . did most of the talking at the meeting and he indicated that they needed to figure out new ways of communicating problems in the service department to higher management "so we could avoid the kind of problems that we are experiencing now with what was going on." He then said that the team leaders should talk to their fellow employees and solicit ideas for ways to address the problems in the service department and suggested an employee committee be formed.

One week later, again on Respondent's time, management met with service technician team leaders Knapp, Boss, and Fassett joined by service technician Omri Winterberger, in the conference room. Keller, Zezulka, and Miller were their [sic] and in response to questioning from Keller, the technicians said they had two ideas as possible ways to address the problems in the shop—a committee or a suggestion box. They discussion how a committee would work and Keller said he would prepare a draft of a survey for the team leaders to review. Thereafter, Miller gave Winterberger, Boss, Fassett, and Knapp a draft of a survey prepared by Keller and Miller. The next day Zezulka said that [t]he first draft of the survey "1had to be rewritten because of the handcuffs that are on the dealership" and he showed them a second survey that was distributed to service technicians a day later.

The surveys were distributed to the service technicians on company time, in team meetings in the break room, and Miller told them to fill it out and put it in a ballot box. Management then passed out a memo detailing the results of the survey and shortly thereafter, Miller had the service technicians vote for members of the committee, (again on company time). Employees were not involved in counting the ballots but management told them that Knapp, Malmgren, and Winterberger had been elected to the committee.

Near the end of September, Miller took Knapp outside the building and told him that he was going to tell Knapp once that Knapp should tone down his union rhetoric. Miller said that Knapp had upset people by the things he was saying about the Union. When asked, who? Miller said that Greg McPherson [Knapp's advisor] has gotten so upset that he went home the previous Friday. Knapp questioned Miller's version about why McPherson had left early but Miller again told him to tone down the union rhetoric.

Committee members met with Keller, Zezulka, and Miller on September 30. Keller selected the date, time, and place of the meeting, who would attend and what would be discussed. Keller ran the meeting and did most of the talking. Zezulka took notes at the meeting, and Respondent had them typed up and distributed to the committee members. The minutes indicate that Keller started the meeting by telling those attending what the format of the meetings would be. Thereafter, among other things, the management and the committee members talked about hours of operation, pay plans, and health insurance. With regard to health insurance, the minutes show that the committee wanted more health insurance options made available to employees and that Zezulka said he would check and see if such coverage was possible. A few days after that meet-

ing, Bass was sent into Keller's office to talk with Keller. After addressing some concerns about the Union, Keller said that he felt like he had a gun to his head and he was not sure what he had done. Keller told Bass that being on the committee put him in a higher position and they could try and address some of the concerns the guys had. Keller also said that there would be no committee if the Union went through.

Meanwhile, service technician Aaron Bass was in the shop near the break area on September 11 when Miller handed him his paycheck and asked Bass how he would vote if the election were held that day. Then, the next week as Miller and Bass were taking a test drive in a vehicle that Bass had just finished repairing, Miller, with his hands spread apart, told Bass, "This is what you have now." Miller then put his hands together and told Bass that if the employees went to a union they would start with nothing—with zero—and then try to work their way back up, if they could ever get back to where they started.

On September 23, Miller called the committee to his office and told them that he wanted to give them pointers on how to present their requests to management. Malmgren walked into the meeting wearing a union hat and a union T-shirt, and Miller told him that he thought it was poor taste for Malmgren to be wearing the union clothing. Malmgren responded by stating that information Respondent had posted on the bulletin board has been in poor taste and when Miller then asked Malmgren to remove the hat, he did. Miller distributed a memo from Keller, which announced a meeting of the committee and set forth an agenda for the meeting. Miller told them that the committee was a great tool for them to advance their agenda and take care of problems. He advised them that when they presented issues to management they should be united in their requests and they should go for an "easy victory and try to get the holiday pay issue and the policy manual issue taken care of to show the technicians in the shop that the committee was really working for them."

A few days after the September 23 meeting, Malmgren had a conversation with Miller in the parking lot in which Miller said that Malmgren's actions, such as wearing a union hat in the shop, were raising tensions, that several technicians were threatening violence against Malmgren, and that he was no longer going to tolerate such actions by Malmgren. Miller did not deny the conversation but said that he never threatened Malmgren with discipline if he did not remove union insignias or articles of clothing.

In early October prior to the October 8 election, Malmgren obtained the signatures of 13 service technicians on a petition supporting the Union. Shortly after Bass signed the petition, Miller told him he had heard that Bass had signed the petition and he could not understand why. Miller said that the workers were going to start with nothing, they were going to have to work hard to even get back to where they were now, and he asked who was going to take care of things like their "402-k" or their health insurance. Two days prior to the election, Zezulka spoke to Knapp in Knapp's work area and said that it was obvious that Knapp was one of the main people involved in getting a union and he asked Knapp to tell him what the issues were. Knapp mentioned several issues and the conversation ended.

One week after the election the Respondent called all service technicians to a meeting in the front office conference room. Keller told the technicians that the Union had filed charges against Respondent and that, unlike the Union organizational drive, which was against the company, the charges were a personal attack on him and he took them very personally.

On October 21, after the election, management had a second meeting with the committee. Keller again did most of the talking at the meeting. He said that he did not know if they would be able to continue to have the committee because of the charges that had been filed. Keller asked if the technicians had any more concerns or anything they wanted to bring up. Knapp asked if Keller had the insurance premium breakdown information that had been talked about in the September 30 meeting. Keller said he had the information, but he could not give it to them "because of what was going on." Winterberger said they needed a light in the employee parking lot for security reasons and Keller said he would check into it. Knapp asked if the tire balancing and mounting areas could be kept free of clutter because of a new machine that was coming in and Miller said he would do something about it. The committee did not meet thereafter and Respondent posted a written notice disbanding the committee.

About 10 minutes after the October 21 meeting ended, Miller asked Bass what he thought of the meeting. Bass replied, "Short and sweet." Bass then added, "Well, not so sweet." Miller then said that the employees just did not get it—they did not understand that they were supposed to go to Keller and tell him they wanted the meetings because Keller could not tell them. Miller said that the employees were supposed to tell Keller that they wanted the meetings and the committee to continue.

In early December, Knapp and Miller had a dispute about a table used by technicians when taking breaks. An hour or two later, Miller told Knapp that the discussion had been a "bad exchange" and he would have given Knapp a write-up "if it wasn't for this union thing." Miller added that he did not know why the "whole Union thing" had to turn against him—be focused on him—and that Knapp had changed since the "Union thing" had started, and Miller did not like the change in Knapp.

Judge Beddow found that Respondent had committed numerous 8(a)(1) violations, including interrogations, threats to sell its business, giving the impression that employees' activities were under surveillance, implying that employees would lose benefits and would be retaliated against for engaging in union activities, and soliciting grievances and offering to correct problems. No exceptions were filed to his decision; and on July 14, 1999, the Board adopted it in an Order and Direction of Second Election.

For about 7 or 8 years, and until May 1, 2000,[14] Knapp had been one of three dispatchers, also known as team or group leaders, each of whom assigned work to the five service technicians in their respective groups, based on the technicians' experience, automotive certifications, and availability. Each dispatcher had a service advisor or writer, who would directly deal with the customer and ascertain the complaints and analyze what needed to be done. The advisors would then give work orders to his dispatcher. In March, Respondent promoted McPherson, Knapp's advisor, to the position of assistant service manager and about the same time decided to reduce the three groups to two for a number of reasons, one of which was that there were too many work orders that required the skills of mechanics who were in other groups. When work was transferred from one group to another, the dispatcher often lost touch with the order; and the work would not always be completed expeditiously.

Respondent felt that the consolidation of the three groups into two would permit each group to have more diversity, there would be less transfers of work from a group, and Respondent would have greater control over the work. In fact, Zezulka had become alarmed at the poor showing Respondent had been making, as reflected in surveys by the Ford Motor Company. Respondent consistently lagged behind the average Ford dealership in customer satisfaction and "do it right the first time" repairs, and Zezulka wanted Respondent not only to exceed the average dealership but also to be in the top 10 percent of all dealers. To reach these goals, Respondent, in addition to reducing the service groups to two and in order in increase the personal contact with the customers, added one advisor to each of the two groups.

With this change, Knapp's service group was eliminated; and he lost his job as dispatcher, which paid, in addition to an hourly wage, 60 cents for each hour of work billed by him and the technicians who were in his group.[15] Instead, he became a full-time service technician. He and all of the technicians in his group were reassigned to one of the two new other service groups, whose dispatchers remained Boss and Fassett, both of whom had been ardently opposed to the Union. The General Counsel contends that Respondent's underlying rationale for not keeping or "demoting" Knapp, but keeping Boss and Fassett instead, was its distaste for Knapp's union activities and his testimony in the hearing before Judge Beddow.

In support, the General Counsel relies on a number of incidents testified to by Knapp, whom I found to be truthful and reliable.[16] To the contrary, I found that Miller's testimony was replete with generalities and lacking in specifics, contradictory, and sometimes overly dramatic. He admitted using certain language testified to by Knapp, but improbably distorted that language to benefit Respondent. I have generally not credited him. In late March, when Miller told Knapp that his team would be eliminated and the two other teams would remain, Knapp suggested to him that Respondent determine which team to eliminate by letting the service technicians decide or by selecting the dispatchers with the most seniority. Miller, according to Knapp, responded that only so much could be done because the decision was coming from "higher up." About 2 weeks later, during the week beginning April 10, he asked Miller if there was anything new to report on the restructuring. Miller again said that Boss and Fassett were going to remain as dispatchers and that Knapp's team would be eliminated and its members reassigned to work on the remaining two teams. It was Miller's job at that time, according to Knapp, to "figure out how to make me whole again as far as the money I'd be losing." Knapp asked when the decision would be final, and Miller said that it would be announced at the upcoming Monday team meeting on April 17.

Sometime later, Knapp found out that Respondent was going to give him a 44-cent-per-hour raise to make up for the loss of the 60-cent bonus for all of his group's book hours, which averaged about 250 hours weekly. About April 24, Knapp complained to Miller that the raise did not approach his loss in earnings. Miller replied, "Well, if it's that much, we're not going to be able to make up that much of a difference." He added, "[T]hat kind of stuff happens to people all the time and it shouldn't be a big deal. And that, in fact, with the things that happened with his [Miller's] pay over the last couple years, you'd think it was him that did something to the Company."

Knapp had yet another gripe. After learning at the April 17 meeting that he was being reassigned to Fassett's team, Knapp told Miller about 2 days later that he wanted to be assigned to Boss's team instead, for a number of reasons: he did the same type of work that Fassett did, and Fassett would assign to himself the better work, permitting him to make more money, and leaving the less productive jobs to Knapp. Boss had a different specialty and would be fairer in dispatching work to Knapp than Fassett, with whom he had a personality conflict. Miller replied that, if he placed Knapp on Boss's team, then there would be two front-end men (specialists in suspension, steering, and alignment) on the same team and he would have to move Todd Porter to Fassett's team. He did not want to do that because he did not want to "ruin Porter's attitude." Miller suggested that Knapp talk to Zezulka if he did not agree with the reassignment. Knapp then met with Zezulka on April 21 and expressed his concerns with the reassignment, and Zezulka promised to get back with Knapp about the matter.

By April 25, Knapp had not heard from Zezulka, so he asked Miller about the status of his request to be assigned to Boss's team. Miller answered that Knapp would be assigned to Fassett's team, to which Knapp charged that he was being pun-

[14] All dates are in 2000, unless otherwise indicated.

[15] Technicians are paid based on the time allotted for the type of job they are performing. More frequently than not, the time allotted is actually more than what is actually needed to complete the job.

[16] In making these and other credibility findings, I have fully reviewed the entire record and carefully observed the demeanor of all the witnesses. I have also taken into consideration the apparent interests of the witnesses; the inherent probabilities in light of other events; corroboration or the lack of it; and the consistencies or inconsistencies within the testimony of each witness and between the testimony of each and that of other witnesses with similar apparent interests. Testimony inconsistent with or in contradiction to that upon which my factual findings are based has been carefully considered but discredited. See, generally, *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). Where necessary, however, I have set forth the precise reasons for my credibility resolutions.

ished for his union involvement and accused Respondent of trying to make an example of him. Miller denied that and said, inaccurately, that Knapp was the only employee with a problem with the reassignment. Knapp said that the reassignment was designed to hurt him and that he was taking the biggest loss. Miller told Knapp to take it "on the chin" and to "work through it," adding, "What did you expect them to do?" Knapp said that he expected them to honor their commitment that no one would get hurt or in trouble over the Union, to which Miller said, "[T]hat was before you had to drag it back to court. You know how much money that cost? There's a lot of hard feelings there and they aren't going to forget that." Miller said that it was time for Knapp to "come back to them" and "work through it" and that Miller would look out for Knapp. Knapp said, "[I]f they think that I'm going to quit because they're doing all this stuff to me, they're wrong. . . . [I]f they want to get rid of me, they'll have to fire me." Miller replied that Respondent would never pay off Knapp to get rid of him, and Knapp said that he would not accept a payoff. He would rather "stay and fight."

There is sufficient reason to connect Respondent's choice of Fassett and Boss to the fact that Knapp had engaged in union activities and participated in the prior Board proceeding. First, Miller said that the decision had been made from "higher up," which would indicate Keller, who, Judge Beddow found, took very personally the fact that unfair labor practice charges had been filed against Respondent. Miller was trying, in his own way, to protect Knapp from Keller's quick and hasty decisions, fearing that Keller would discharge Knapp immediately because of his opinions about Knapp's union activities and prior testimony. He thus warned that Knapp did not want to hear about the decision from anyone other than him, because "those guys up there have a hair trigger." He added that he would deny ever having made this comment. This is consistent with Miller's earlier comment, in reference to Knapp's raise of only 44 cents, that "you'd think it was him [Miller] that did something to the Company," an implication that Respondent's action resulted from something that Knapp had done to Respondent. Furthermore, there is Miller's question in reply to Knapp's charge that Respondent was reassigning him to hurt him for his union activities and prior testimony, "What did you expect them to do?" That was followed by Miller's explanation that Knapp "dragged" the unfair labor practice allegations "back to court," that the earlier Board proceeding was costly and created "hard feelings," and that "they aren't going to forget that," statements that Miller did not deny or explain.

Finally, Miller stated that it was Respondent's intent to keep Knapp there and make life miserable for him. It did so by reducing his pay, despite Respondent's inconsistent position regarding the 44-cent raise that it gave him. Zezulka insisted that he was "trying to make sure that [Knapp] wasn't penalized," that the raise "would get him back to even," and that "as a matter of fact, we felt that he would actually make even more money than he would have been with just the productivity bonus." Miller contradicted Zezulka's testimony and conceded that Knapp was being paid less: "That was not supposed to make him whole. That was like a good will gesture, to try and get him going again." Yet he immediately contradicted himself when asked whether he thus recognized that the increase probably would not make Knapp whole and would result in some loss of earnings. Miller answered, "I did not recognize that at all. I thought that by—you know, by taking away the dispatch pay, and giving him the opportunity to be more productive, that that was going to be a break even. That was my intent."

Respondent failed to answer adequately my request for the formula (Zezulka testified that the amount was "based on some calculations") that it used in arriving at a 44-cent hourly increase, $17.60 for 40 hours, to make up for the 60-cent bonus for 250 hours weekly, or $150. Zezulka testified generally that the 44 cents was computed based on approximately 20 percent of Knapp's time being spent dispatching work to other technicians in the shop. (Knapp testified that he spent only 10 percent of his time dispatching.) When he was transferred, he would be able to be more productive because he had more time to work on jobs. On the basis of Miller's estimate that high producers exceed their base rate by 60 percent, the increase would total only 70 cents, or $28 for 40 hours. Even assuming that Knapp could double his hours for productivity, there is no formula that can sustain Respondent's position; and Respondent's attempt to demonstrate that Knapp gained and did not lose money fails, because it did not substantiate its conjecture that Knapp spent 20 percent of his time doing the work of a dispatcher.

Knapp's pay records show that he lost money as a result of the reassignment, although not as much as he testified to. A comparison between the 8 weeks Knapp worked as dispatcher before his transfer and the 8 weeks after reveals that his take-home pay averaged $427.77 before; $379.05 after. His average net pay for the previous year was $1353.19; for the short period after he lost his dispatcher's position, $1253.59.[17] Respondent never explained the reason that Knapp actually lost income. No one on Respondent's behalf claimed that Knapp was not doing his job productively or at any level less than he was capable of performing. Rather, Zezulka claimed that "his productivity was still okay and doing well." Finally, Respondent failed to submit figures for Boss and Fassett, both before and after the change, which would more accurately reflect what dispatchers actually made and would compare Respondent's treatment of them with its treatment of Knapp. It appears that the change resulted in more pay for Fasset and Boss. Although Respondent reduced their bonus after May 1 to 50 cents per hour for all hours billed by them and their technicians, a reduction of one-sixth, their pay should have increased because they had at least three more technicians in their groups, an increase from 6 to 9 or 50 percent.

In sum, Knapp was justified for feeling that Respondent was out to hurt him and make his life unpleasant by reason of its failure to choose him as one of the dispatchers and its subsequent treatment of him. I find more than sufficient proof to sustain a prima facie 8(a)(3) and (4) case under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983); *Techno*

[17] In these computations, I have included only full, not partial, weeks.

Construction Corp., 333 NLRB 75 (2001); *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996).

The question then turns, under *Wright Line*, whether Respondent has shown that it would have taken the same action even in the absence of Knapp's union activities and prior testimony. Respondent alleged that it retained Fassett and Boss for two reasons: First, each of them had worked for a year or more with their service advisors, with whom they had a close relationship and proved that they were capable of working together well. Respondent did not want to disturb those relationships. There was no similar relationship between Knapp and his service advisor, who had been promoted to a different position and thus was no longer working with Knapp. Although there may be some valid justification in maintaining the relationship between the advisor and dispatcher, that is not a hard-and-fast rule. The advisors had regular contact with all of the dispatchers. Respondent once moved a service writer to a different dispatcher; and, on other occasions, when an advisor was on vacation or sick or at a training session, someone else had to fill in for him, thus causing the dispatcher to work with a different advisor. Finally, there was no evidence indicating that Knapp, who had been dispatching work as long as Boss and longer than Fassett, did not get along well with any of the service advisors.

An additional problem with this first reason is that it comes primarily from Miller, whose testimony was repetitiously general, without details or substance. One of Respondent's contentions at the hearing was that Knapp was disruptive to the workplace. In support, Miller described the work environment of the service department as "a small, close knit" group, working closely together to prepare customers' cars, where "one technician's performance or attitude or behavior [has] an impact on other people in the shop." The reason for that was that "obviously, if one guy has a bad attitude towards a repair or a person, other people like to jump on board. And they become affected by that attitude." When asked what he meant, he gave

> a classic, great example. We took out a Kia line a couple of years ago, and some people think that this Kia vehicle is just cheap little jockey car.
>
> And the first ones were—you know, they weren't all that great. But the year 2001, they have improve the quality of that vehicle substantially.

But I still have people that linger on that bad car mentality on that car. And I can't get them off it. And I've had other people affected by that bad attitude towards that car, even though the car has progressed nicely in the last two years.

That affected the technician's "attitude towards the car, the repairs, that customer. . . . A car may not get the attention that it needs." When asked if the technicians do not attend to the repairs on Kias because they do not like the car, Miller answered, "It becomes a lot more difficult for me to get those repairs done. Because I have to work—Instead of putting somebody on that job and having them do it, I have to go back there and really hands on, manage that repair, lots of times." Later, during cross-examination, after admitting that some of the service technicians expressed their desire not to have to work on the Kias, Miller conceded that Knapp never did. So this one "classic, great example" of "attitude" had no application to Knapp at all. And the employees who appeared to be disloyal to Respondent's product[18] were not disciplined for many of the same reasons that Respondent ultimately utilized to justify its discharge of Knapp, such as their failure to agree with the way Respondent did business, their lack of fit with the dealership, and their "cancerous attitude."

Respondent's second contention is that it had evaluated Fassett and Boss consistently better than Knapp, and Miller regarded them as better dispatchers because they were "pushy" as opposed to Knapp, who was "passive." Respondent submitted the 1999 evaluations for all three advisors, and they showed Fasset and Boss with "a little bit" higher ratings. That is tempered somewhat by the fact that Miller prepared these evaluations after the hearing before Judge Beddow. Furthermore, the evaluations reflected primarily the technical skills of the dispatchers, not their method of dispatching. To the extent that any evaluations had any explicit relevance to the job of dispatcher, Miller wrote on Knapp's 1997 evaluation, "very happy doin' what your doing." On the next year's evaluation, Miller wrote that Knapp's "dispatch knowledge [is] very good." He even wrote that Knapp "would make a good dispatcher," which could very well have meant, according to Miller, and it only makes sense that it does, that Knapp would be a good central dispatcher in the event that Respondent returned to the central single dispatcher system that it had years before. Respondent offered no evaluations of the other two dispatchers for the same years to make a comparison. Respondent did not show, moreover, that, as a result of their different methods of dealing with their groups, Knapp's group was slower, less productive, less efficient, or less skilled.

On the other hand, no earlier evaluations of Boss and Fassett were offered to show that Knapp was appraised more favorably. And Knapp never denied Miller's testimony that he had complained to Knapp about his "passive dispatch" for 4 or 5 years and "absolutely" told him that he did not want him to dispatch in this manner, "[b]ut it always kind of reverted back to that passive dispatch." So, it appears that Miller liked the dispatching of Boss and Fassett better than Knapp's, that the two others received higher evaluations than Knapp, and that, despite my doubts about Miller's credibility, Respondent had justification for not interfering with the working relationships that existed between Boss and Fassett and their advisors. Accordingly, I find that Respondent met its *Wright Line* burden of proving that it would not have retained Knapp as a dispatcher in the absence of Knapp's union activities. I dismiss this allegation. However, because Miller told Knapp that Respondent was refusing to consider and retain Knapp as a dispatcher because of his union activities and because he gave testimony in the prior NLRB proceeding, I conclude that Respondent violated Section 8(a)(1) of the Act because of the statement's likely chilling effect on Knapp's exercise of his Section 7 rights. *Mediplex of Danbury*, 314 NLRB 470, 472 (1994).

[18] Respondent's handbook provided: "Employees are expected to be loyal in their speech and conduct to the Company and the products we sell and service. You are not performing your job properly if you are not holding the Company and its products in high regard."

The next issue concerns a life and disability insurance benefit that Respondent announced in the spring and put into effect on June 1 for the nonclerical personnel in its service and parts departments and body shop. Respondent and the employees were to share in the payment of premiums; and, according to the benefits and cost summary that Respondent distributed to its employees, it was to pay 50 percent of the premium for employees of 6–10 years and 75 percent for employees of 11–15 years. The summary specifically stated:

> Contribution or changes in the contributions level by Keller Ford start or change on either the *January 1 or July 1* following the hire date anniversary of an employee. On this date Keller will initiate the new contribution level for the employee. [Emphasis in original.]

It so happened that Knapp's employment anniversary date was June 26, when he was employed for 11 years. The paycheck for Friday, July 7,[19] covered the preceding week, Sunday to Saturday, including July 1, which reflected the work for Knapp's anniversary, the date that he believed that Respondent was to increase its contribution level from 50 to 75 percent. He found that $6.16 was still being deducted from his paycheck. The proper amount, according to him, should have been $3.08. When Knapp complained to Miller that the check was wrong, Miller, "thinking that [he] had missed something," promised to consult with Zezulka. According to Knapp, when the same deduction appeared the next week, which would have been Friday, July 14, he again complained to Miller, who said that he had forgotten to inquire but promised to do so. And when the deduction again appeared on the third check, which he would have received on July 21, Knapp made known his displeasure; but Miller said that he had checked with Zezulka, who said that no changes would be made until January 1, 2001.

Miller remembered things differently, confirming Knapp's first questioning of the payment, but testifying that he told Knapp on the next payday that Respondent would not pay the higher amount. When Miller said this, Knapp said that the summary specifically provided that the premium was supposed to be adjusted on July 1. Miller said that there was probably not much Knapp could do about it, especially if only a couple employees were affected by it; but if it affected a lot of people, then Respondent might do something about it. Knapp said that he was going to find out how many people were involved, but Miller warned: "Well, don't go getting everybody riled up about this. It could be hazardous to your health." Knapp told at least five other employees in late July that Respondent was not paying the proper amount of the copayment to him and asked whether they were affected by Respondent's failure to increase their premium shares. He found that no one was.

The plan summary, the wording of which was not changed in at least two drafts, provides, consistent with Knapp's complaint, that Respondent's copayment increased on either January or July 1 immediately after the employee reached the applicable hire date anniversary date. The written commitment to increase the share of the premium was not optional and was not, by its terms, limited to begin only the following January, as Respondent contends. However, Zezulka testified that he specifically told all the employees at meetings that no changes in copayments would be made until January 2001. His testimony was fully corroborated by David Fishman, the insurance broker who helped develop the plan,[20] and partially by Miller, who attended one of the three meetings conducted by Zezulka and heard him say precisely that.

There are a variety of reasons not to believe Respondent's witnesses. Despite Miller's testimony that he heard Zezulka tell the employees that the change would come only the following January, he never made that known to Knapp, when he first asked, or at any later date. When Knapp first asked, Miller replied that he had to check on it; and it was only when he did, even according to his own testimony, that he then reported to Knapp that the premium would not be adjusted, without giving any reason. Miller testified that he "was actually kind of surprised" by Knapp's complaint, because he did not know that anybody in the dealership had any idea that Respondent was going to change its contributions within 3 weeks or 4 weeks of installing the plan. "It seemed like an unreasonable request," answered Miller. Miller also admitted asking Knapp whether other employees were affected in the same way as Knapp; and, when Knapp said that he did not know and would ask the employees, Miller said that Miller would look into it. He gave no reason for making that commitment, which was given in the face of what he had allegedly heard at the meeting and been told by Zezulka that no changes would be made.

In spite of my doubts, I find compelling the counsel for the General Counsel's failure to rebut specifically the testimony regarding the oral announcement at meetings with the employees of the fact that no change would be made on July 1. Knapp did not deny that such a statement was made or affirmatively state that he even attended such a meeting;[21] and the counsel for the General Counsel called no witnesses, particularly employees, to deny that Zezulka made such a disclaimer. Accordingly, I credit Respondent's witnesses and find that its failure to increase its contribution, and thus to reduce Knapp's, was not the result of any discrimination in violation of the Act. I dismiss this allegation. I also find the Miller's threat that talking to other employees about Knapp's copayment was "hazardous" to Knapp's health did not independently violate Section 8(a)(1). Knapp's concern with the amount of Respondent's copayment was his own, and not a matter of common interest. He was trying only to ascertain the anniversary dates of the other employees, facts that might have been helpful to him, and was not seeking group action. Miller's threat, therefore, did not interfere with Knapp's protected and concerted activities.

On August 2, in the middle of the day and without warning, Respondent discharged Knapp. Miller wrote on Respondent's separation form the following reasons:

[19] The General Counsel contends that the date of the first paycheck about which Knapp complained was 1 week later, which is equally likely, in which event all the dates recited are a week later.

[20] According to Fishman, "we did that because it takes time to get billing cycles put into place, to get the plan put into place, to get booklets to people. And it just didn't make sense to put the plan into place and then immediately adjust."

[21] The record suggests that he probably did.

> non-supportive of dealership goals
> Basic Philosophical Differences 1) He doesn't agree with the way we do business 2) At will Employment 3) Not a good fit for the dealership 4) Cancerous attitude

What do these vague generalities mean? The "at-will employment" reason suggests that Respondent did not have to give a reason, and was not giving one, as it did not in the position statement that it gave to the Region during the investigation of the underlying unfair labor practice charge, or to Knapp, when Miller fired him, claiming that he had been told to keep Respondent's reasons vague and general. Although Respondent continues in its brief to rely on its right to discharge someone for no reason at all, I find that particularly unpersuasive in the case of an 11-year employee who was one of the few employees trusted by Respondent to be designated a dispatcher and had served in that capacity, almost without blemish, for 7 or 8 years.

Regarding the remainder of the reasons, Respondent defends its discharge essentially on the ground that Knapp complains; and some of the reasons it expressed are simply repetitive. "Non-supportive" means that he does not agree with the way Respondent does business, at least in complaining that Respondent assigned him to Fassett's team, where he lost money, and refused to pay the percentage of the insurance premium that Respondent agreed in writing to do, albeit I have found that Knapp did not hear or listen carefully to all that was said at an employees' meeting. Nonetheless, Zezulka's justification—"Because we thought that we had implemented a good benefit plan for our employees and we felt that this just took away from that great benefit that we were offering to them"—was not credible. As Zezulka later acknowledged, Respondent needed the approval of 75 percent of its employees before putting the plan into effect. Knapp was a leader in praising the plan and getting that support; and so his gripe that Respondent had agreed to pay $3.08 more each week, and then did not, does not prove that Knapp did not support the new plan. Similarly, there was no justification for Miller's testimony about the $3.08 copayment, which was very much like Zezulka's, that

> when you get a complaint about what I thought was a great dealership benefit, I mean, it really makes me feel like we, as a dealership, missed the boat on something. Where did we—you know, where did we fall down? How did I not communicate?
>
> It makes me question my ability to manage. It affects me.

The fact that Knapp thought that he was being overcharged $3.08 a week could hardly be understood as "taking away from that great benefit" or affecting anybody's "ability to manage." Knapp obviously was looking out for himself, but his actions resulted from self-interest and were not intended to harm and could not possibly have harmed Respondent. Other than the self-centered reasons he expressed, losing his position and the extra money it paid and being assigned to Fassett's team, where Knapp thought he would lose even more than if he had been assigned to Boss's team, Knapp showed no signs that he was "non-supportive" of Respondent's general change. Rather, Knapp was merely using Respondent's own rules of employee conduct, which stated that it maintained an open-door policy, thus encouraging employees to come to Respondent with their problems. Zezulka's claim that "any type of questioning on what we were doing was disruptive" was contrary to the intent of Respondent's rules. In addition, in answer to Keller's contention that complaints were proper as long as they were justified, Respondent's rule does not say as much; and Knapp's complaint clearly was valid on its face, at least under Respondent's summary quoted above. Accordingly, I do not find Knapp's conduct "non-supportive."

I return, then, to an assessment of whether Respondent truly was motivated to discharge Knapp solely by his complaints, without consideration of his union or concerted activities or his prior testimony. I find that it was not, because Respondent was unable to detail the amount and types of complaints with sufficient consistency, clarity, and detail to convince me that its claim was true and credible. Zezulka testified first that Miller relayed Knapp's complaints about the reassignment "several times" within the 2 to 4 weeks after May 1. So, Miller's complaints about Knapp would have ended no later than the end of May, perhaps earlier. Later, Zezulka answered that Miller talked to him "[t]hree, four times," as late as "[p]robably in July," but that was just an "educated guess." Miller gave the impression that Knapp's complaints about his removal from his dispatcher's position were ongoing (Respondent's brief states "through the summer"). He dramatized them as follows: "It was like a big old dark cloud over my head. It was always there." He reported them to Zezulka "probably biweekly," which would mean that he talked about them with Zezulka about seven times. Miller also recalled that Knapp complained about the insurance premium every few days, or at least four or five times within the second half of July. According to Zezulka, however, Miller pointed them out to him a "couple of times [o]ver a couple of weeks." The final player in this drama, Keller, reported that he had been inundated with complaints from Zezulka, although he never detailed this inundation; and he ordered Knapp's discharge because Knapp was distracting Miller and taking up his time, how much Keller found impossible to relate "specifically," "to focus on the specific customers and the other technicians." Keller never testified about what time was lost by Miller in focusing and what customers and technicians lost his attention.

Nor did Miller testify to that distraction or loss of time. But he did testify that, after the restructuring, Knapp's attitude was "definitely different. . . . [W]e didn't really talk as much as we did before that. We tried to stay away from each other, so we wouldn't get each other all mad at each other." That impacted on Miller's ability to work with him: "[Y]ou can communicate with somebody about day-to-day business, you know, if your personal relationship has changed dramatically. As hard as you may want to try, it is different. It is harder." Miller could talk to Knapp about a repair, but he didn't try to engage in conversation "with him [Knapp] any more than [Miller] absolutely had to." Nonetheless, despite the fact that that the two tried to stay away from one another and barely talked, Miller testified that Knapp continued to complain about the reassignment, although he was unable to detail those complaints; and when the copay-

ment dispute arose, Knapp continued to complain every few days, or at least four or five times within the second half of July, but Miller was unable to distinguish one complaint from the next. In addition, other than his bald assertion, Miller made no showing that any technician respected him less or questioned his authority or that his ability to manage was at all impaired. In sum, I find that Respondent's defense consists of many words, but without substance.

For 11 years, Knapp appeared to be "a good fit" at Respondent's business. Respondent did not show that he did not do his work as assigned or that he failed to do it well. The only times that Knapp had been disciplined were twice in the early 1990's, when he received two warnings, one verbal and one written, for failing to wear his safety glasses, and a written warning in 1997 for not parking in the employee parking area. Miller never suggested on any of his appraisals that Knapp had suddenly changed his work habits or had withdrawn his loyalty from Respondent. What is possibly Miller's worst indictment of Knapp is that he had a "cancerous attitude," which the counsel for the General Counsel correctly notes is an attitude that perniciously spreads to others, an expression that is more a euphemism for his prounion sentiments, that he was engaging in union activities and trying to incite his fellow employees to engage in protected and concerted activities, rather than a criticism of Knapp for complaining to Miller. *James Julian Inc. of Delaware*, 325 NLRB 1109 (1998). I found no proof that Knapp's attitude and complaints to Miller had anything to do with customer dissatisfaction or unhappiness, as Respondent repeatedly contended during the hearing. In fact, Respondent had in its yearly evaluations rated Knapp favorably on his customer relations; and there was nothing in any of those evaluations supporting any of the reasons Respondent used to justify his discharge on August 2.

I thus find no credible support for the reasons that Miller wrote on Knapp's separation form. Consistent with Board law, where there is no legitimate reason, it is reasonable to infer that the false reasons were interposed to conceal unlawful ones. *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966); *Painting Co.*, 330 NLRB 1000, 1001 fn. 8 (2000). Here, as shown in the discussion of Knapp's demotion, there was substantial evidence of an illegal motive. Miller's comments to Knapp a few months earlier showed that Respondent refused to keep him as a dispatcher because of Knapp's participation in the expensive unfair labor practice hearing before Judge Beddow. Those "hard feelings" had lasted into April. There was no evidence that they had waned by August 2. I conclude that Respondent violated Section 8(a)(4) of the Act by discharging Knapp.

I also conclude that Respondent discharged him for his union activities in violation of Section 8(a)(3) and (1) of the Act. What precise event convinced Keller to squeeze the "hair trigger" is not absolutely clear. Judge Beddow found a year earlier that Miller did not like the change in Knapp since the "Union thing" had started. After the Union withdrew its petition in the late summer of 1999, Respondent must have thought that the employees' efforts to organize had ended. But Knapp's activities in the spring of 2000 once again became of concern. He renewed his attempts to obtain support of a union in April. In July, after telling Miller that he was going to talk to other employees to see if they had been affected by Respondent's refusal to increase its copayment on July 1, and Miller had threatened that such action might be "hazardous to his health," he asked certain employees if they would be willing to sign a petition. Some said that they would vote for a union, but did not want to sign a petition. The Union apparently wanted a petition signed by 60 percent of the employees, and it became apparent to Knapp that he could not obtain that number, so he told about seven or eight employees that he was going to check into the possibility of signing a petition with the 30 percent of the employees that the Board's Rules required, and then afterward, if successful, affiliate with the Union. When asked with whom he discussed the possibility of petitioning for another election, Knapp named three other employees, including one who Miller testified had complained to him about his reassignment, without hesitation and without any sign of having made up their names or their participation.

I credit Knapp's testimony and find that Respondent must have learned rather late that Knapp was again engaged in some conduct that Respondent perceived was against its interests. Knapp's earlier union activity was well known to Respondent. By the summer of 2000, Knapp was the only employee who had testified against Respondent left in its employ, Bass having quit during the prior summer and Malmgren having been fired in November 1999. Respondent's counsel conceded at the hearing that Respondent's service department was a small place, informal, with 20 employees working in close quarters, and no elaborate hierarchy, where everybody knows each other. There was no showing that Knapp concealed his attempts to interest the employees in self-organization. I impute to Respondent knowledge of Knapp's further attempts to organize the employees pursuant to the Board's small plant rule. *Wiese Plow Welding Co.*, 123 NLRB 616 (1959). I also rely on Respondent's precipitous discharge of Knapp, without warning, without any incident which preceded the event, and for no believable reason. Respondent must have learned that it was going to face a costly union fight all over again, one which Keller had not forgotten, as shown by Miller's earlier statements, quoted by Judge Beddow, and his more recent statement that implied that Knapp had done "something to the Company." However, I also conclude that Knapp's discharge did not independently violate Section 8(a)(1) of the Act. Knapp attempted in July, in furtherance of reducing his own premium copayment, only to find out whether other employees were similarly situated. There was no attempt to induce group action in the interest of the employees. *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964); *Circle K Corp.*, 305 NLRB 932 (1991), enfd. 989 F.2d 498 (6th Cir. 1993).

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Because Respondent discriminatorily demoted and discharged Knapp, I shall order it to offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of dis-

charge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law, on the entire record, including my consideration of the briefs submitted by the General Counsel and Respondent, I issue the following recommended[22]

ORDER

The Respondent, Keller Ford, Inc., Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Telling its employees that their union organizing activity and testimony under the Act were the reasons for adverse actions against them.

(b) Discharging its employees because they engaged in activities on behalf of the Union or any other union or because they testified in a National Labor Relations Board proceeding.

(c) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Bryan Knapp full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Bryan Knapp whole for any loss of earnings or other benefits suffered as a result of the discrimination against him, in the manner set forth in the "Remedy" section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge, and within three days thereafter notify Bryan Knapp in writing that this has been done and that the discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Grand Rapids, Michigan, copies of the attached notice marked "Appendix."[23] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 25, 2000.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[22] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[23] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."